

	OAH 7-1902-17046-2 Agency No.BC2502118/GJL and BC2502203/GJL
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Home Dreams Construction, Inc.	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis on June 27, 2006 at 11:00 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota. The hearing was held pursuant to a Notice of and Order for Hearing, Order to Show Cause, and Statement of Charges dated January 11, 2006, which was served on the Respondent, Home Dreams Construction, Inc., at its last known address on file with the Department of Labor and Industry.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Labor and Industry. There was no appearance by or on behalf of the Respondent, Home Dreams Construction, Inc., c/o John Raymond Healy, 60900 120th Avenue, Claremont, MN 55924. The OAH record closed on the Respondent's default on June 27, 2006.

STATEMENT OF THE ISSUES

1. Did the Respondent fail to respond to the Department's investigation, in violation of Minn. Stat. § 45.027, subd. 1a?¹
2. Did the Respondent fail to complete projects in breach of contract in violation of Minn. Stat. 329.91, subd. 1(4)?
3. Did the Respondent demonstrate financial irresponsibility by failing to complete projects after accepting payment in violation of Minn. Stat. 326.91, subd 1 (6)?

¹ Unless otherwise noted, the 2004 Minnesota statutes and the 2005 Minnesota rules apply.

4. Did the Respondent accrue more than \$500 in delinquent taxes owed to the Minnesota Department of Revenue in violation of Minn. R. 2891.00050, subp. 1B and Minn. Stat. § 326.91, subd 1(6)?

5. Is the imposition of discipline against the Respondent in the public interest?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing, Order to Show Cause, and Statement of Charges initiating this contested case proceeding was served on the Respondent via first class mail on January 12, 2006, at the following address: John Raymond Healy, Home Dreams Construction, Inc., 60900 120th Avenue, Claremont, MN 55924.

2. The Notice of and Order for Hearing, Order to Show Cause, and Statement of Charges contained the following language:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

3. A Prehearing Conference was conducted in this matter on April 4, 2006. Both the Department and Mr. Healy attended the Prehearing Conference. The parties agreed that they would attempt to work out a resolution of the matter, but that if the matter was not resolved a hearing would be held on June 27, 2006. The ALJ summarized the agreement in a letter to the parties dated April 7, 2006.

4. The Department and Respondent did not resolve this matter and the hearing proceeded as scheduled on June 27, 2006.

5. The Respondent did not make any request prior to the June 27, 2006, hearing for a continuance or any other relief. The Respondent did not personally appear at the hearing in this matter scheduled for June 27, 2006, nor was there any appearance made on its behalf. Because Respondent failed to appear at the hearing without prior consent of the Administrative Law Judge, it is in default.

6. In April and March 2005, the Department received complaints from Blooming Prairie, Minnesota home owners regarding the Respondent.² The

² Exs. 2 and 3.

home owners hired Respondent to repair storm damage to their homes in September 2004.³ The home owners' insurance company issued checks to the Respondent. The Respondent only partially performed the contract and much of its work was defective.⁴

7. The Department sent letters to the Respondent on April 5, May 16, July 20 and September 16, 2005 regarding the complaints.⁵ The Respondent failed to respond to any of the letters.

8. On November 21, 2005, the Department received a Notice of the Respondent's License Revocation from the Minnesota Department of Revenue, indicating that the Respondent owed the Department of Revenue \$64,066.94 in delinquent taxes.⁶

9. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are taken as true.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 326.91, 326.92, 45.027, subd. 1, and 45.024.⁷

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the hearing. Respondent is required to file an accurate address with the Department. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

³ *Id.*

⁴ *Id.*

⁵ Exs. 4, 5, 6, 7 and 8.

⁶ Ex. 1.

⁷ On May 16, 2005, the Governor signed Executive Order 193, transferring the responsibility for regulation of residential building contractors to the Commissioner of Labor and Industry from the Commissioner of Commerce.

5. Under Minn. R. 1400.6000, the Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the hearing.

6. Respondent violated Minn. Stat. § 45.027, subd. 1a by failing to respond to the Department's investigation.

7. Respondent violated Minn. Stat. 329.91, subd. 1(4) by failing to complete projects in breach of contract.

8. Respondent demonstrated financial irresponsibility by failing to complete projects after accepting payment in violation of Minn. Stat. 326.91, subd 1 (6).

9. Respondent accrued \$64,066.04 in delinquent taxes owed to the Minnesota Department of Revenue in violation of Minn. R. 2891.00050, subp. 1B and Minn. Stat. 326.91, subd 1(6).

10. Disciplinary action against the Respondent is in the public interest.

Based on these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: that the Commissioner of the Minnesota Department of Labor and Industry take adverse action against Respondent's license and impose a civil penalty upon Respondent.

Dated: July 7, 2006

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Default, 1 tape
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommended Decision. Under Minn. Stat. § 14.61, the final

decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to find out about the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

On July 6, 2006, the ALJ received a telephone call of Mr. Healy, who explained that he had mislaid the ALJ's letter reminding him the hearing date while he was in process of moving. Mr. Healy also mentioned that he had contacted the Department official assigned to this matter on several occasions since the Prehearing Conference to attempt to initiate or advance settlement negotiations, but that the official had not called him back. The ALJ advised Mr. Healy to call the Assistant Attorney General assigned to the case. If the Attorney General's Office or the Department decides to grant the Respondent a hearing at this stage, the ALJ will re-open the Office of Administrative Hearings file and schedule one. Or, if the Department can convince the Commissioner to order remand of the matter for cause, the ALJ will comply and conduct a hearing on the merits.

Based on the record, and having considered Mr. Healy's explanation for not appearing on June 27, 2006, the ALJ is not persuaded to exercise his discretion and reconvene the matter for hearing on his own motion at this point. Mr. Healy had clear oral notice of the time and date set for hearing, as ordered at the Prehearing Conference in April. That oral order is sufficient to constitute notice, and the reminder letter was sent out strictly as a courtesy. It is unfortunate that Mr. Healy forgot about the scheduled hearing in the interim, and that he mislaid the written reminder, but the ALJ is further persuaded not to reconvene the hearing because the record indicates that the Respondent would

have little chance of persuading a fact-finder that no disciplinary action is appropriate, should the matter reconvene. If the Respondent has evidence that may mitigate any violations, and thus possibly alleviate any penalty imposed in a final decision, the ALJ stands ready to hear it if the Commissioner orders remand for that purpose.

R.C.L.